

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

September 9, 2010

**Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: CONSERVATION DISTRICT USE PERMIT APPROVAL FOR THE
WAINIHA CONSERVATION PROJECT

APPLICANT: Kaua'i Watershed Alliance

LANDOWNER: McBryde Sugar Co., Ltd.

LOCATION: Hanalei District, Island of Kaua'i

TMK: (4) 5-8-001:001

PARCEL AREA: 10,000 Acres

AREA OF USE: Approximately 1,604 Linear Feet of Fencing to protect 7,050 Acres

SUBZONE: Protective

SUMMARY:

This submittal requests the Board to approve and grant a conservation district use permit (CDUP) for activities identified in the conservation district use application (CDUA) and accompanying management plan for the Wainiha Conservation Project (Exhibit A). This project is undertaken by the Kaua'i Watershed Alliance (coordinated by The Nature Conservancy), which was formed in 2003 for the long-term protection of Kaua'i's upper watershed forests to ensure the state's water supply.

DESCRIPTION OF AREA / CURRENT USE:

The proposed project is located in Wainiha Valley in the north eastern mountainous portion of the island of Kaua'i on Subject Parcels (4) 5-8-001:001. The project area borders property owned by Robinson Family Partners on the south and north, State of Hawaii parcels managed by the Division of Forestry and Wildlife on the east and west, and Kamehameha Schools property in the east. The elevation in the preserve ranges from 1100 to 4200 feet. Proposed protective fencing, approximately 1,604 feet in length, will work in conjunction with vertical cliffs and natural barriers to protect approximately 7,050 ac of McBryde Sugar Company, Ltd. (McBryde) land

located within the Conservation District. The preserve includes irreplaceable watershed and unique native ecosystems, as well as the rare and endangered species they support.

Historic Sites

An archeological assessment was conducted by T.S. Dye and Colleagues, Archeologists, Inc. in January 2010. No historic properties were identified near the project corridor. The fenceline was surveyed, the land use history of the ahupua`a was investigated, and previous archeological research in the vicinity was reviewed. Observations of topography and an exposed stratigraphic section indicated that subsurface historic properties are unlikely to be found. It was concluded that no historic properties are present.

Contemporary Cultural Resources and Practices

The project area is located in the very remote, upper portion of Wainiha, within the Wainiha Preserve (7050 acres), approximately 9.0–9.5 km from the coast. There are no established trails leading to or near the project area. The terrain is rough, wet, and characterized by dense forests and shrubland, cliffs and steep stream walls. Access is only via written permission from the private landowner and is regulated by their right of entry protocols.

There is very limited cultural, historical documentation of the project area and there are significant natural resources located within the project area. Any historical/cultural sites located within the fenced area are unknown. Resources consist of the diverse populations of native Hawaiian plants found within the Preserve. Many of these plants have cultural significance and are used traditionally. It is important to note that the majority of these plants may also be found in numerous areas within easy access of paved roads, 4WD roads, and maintained trails throughout the island. The construction of the protective fences will not impact access to the area for cultural purposes. Within the fence alignments, several access gates will be located to accommodate access to the area.

Natural Environment

The flora and fauna of the Wainiha Preserve consists predominantly of native plants and animals. It is estimated that 90 % of the forest is intact native forest. Native fauna consist of invertebrates, Koloa Duck, and seasonal sea birds 'Ua'u and 'A'o and the Hawaiian Hoary Bat. The valley contains 222 native plant species, 177 of which are endemic, 63 endemic only to Kaua'i. Native plant and plant community types include Montane and Lowland Wet Forest and Shrubland, Wet Cliff, Freshwater Stream and Riparian Corridor. Forest birds include Kaua'i `amakihi, `apapane, `elepaio, white-tailed tropic bird, endangered Hawaiian petrel and the threatened Newell's shearwater. The stream is home to native fish, insects, mollusks and the koloa duck.

PROPOSED USE:

Proposed protective fencing will be approximately 1,604 ft. in length, and will work in conjunction with vertical cliffs and natural barriers to protect approximately 7,050 ac of McBryde Sugar Company, Ltd. land located within the Conservation District. If required, short sections of fencing along natural barriers may be added to manage the area effectively, as well as additional Radio Repeaters to increase effectiveness of communications and crew safety.

The project will involve the clearing of vegetation, several inches above ground level, from up to a 10 ft wide corridor along the length of the proposed fence alignment using small power and hand operated machinery (i.e., handsaw, pick ax, weed eater, chainsaw). A 48 inch (in) high

fence will be constructed using wire mesh or standard hog panels supported by galvanized T-posts.

To provide weather protection and safety for workers during natural resource management activities, up to 3 weatherports will be assembled. The weatherports will consist of a pre-fabricated weather shelter that is assembled on a raised platform. The shelter will be an 8 ft high octagon, with a radius of 20 ft. (*See Exhibits A & C: Project Location map & Weatherport example*) The following human waste disposal protocol will be followed in order to prevent stream contamination or the breeding of mosquitoes: a 3 to 4 ft deep hole will be dug and human waste, enclosed in compostable bags, will be covered in either agricultural lime or bacillus thuringiensis pellets before being filled in with dirt at the end of each field trip. A number of baited silo traps will be dispersed throughout the project area.

After construction, the project will consist of natural resource management activities such as feral pig and goat monitoring and removal, baited trapping, installation of short sections of fencing to control any feral pig movement through vertical cliff barriers, invasive weed control, fence maintenance, and monitoring to track the recovery of native plant populations.

SUMMARY OF COMMENTS:

Comments on the Environmental Assessment were received from:

US Fish and Wildlife Service: Recommended increasing the visibility of the fence by weaving electrical polytape through the top row of wire where the fence is the tallest structure to prevent collision by seabirds. The fence will provide an overall benefit to native species and watershed protection.

Department of Land and Natural Resources, Division of Forestry and Wildlife Provide more detail on prevention protocols for alien species introductions during fence construction, restore areas after removal of weatherports, indicate landing zone locations, work with the Plant Extinction Prevention Project, explore opportunities for increased public hunting on other partnership lands, follow US Fish and Wildlife Service protocols when dead seabirds are found.

Gary Smith, Kauai Resident The project is necessary to prevent destruction of native forests.

These concerns were adequately addressed in the Final Environmental Assessment.

ANALYSIS:

Following review and acceptance for processing, the applicant was notified by letter, dated June 15, 2010 that:

1. The proposed use is an identified land use under Chapter 13-5: P-7, SANCTUARIES, requiring a board permit and submittal of a management plan;
2. Pursuant to Section 13-5-40(a), HAR, a public hearing will be required; and
3. In conformance with Chapter 343, (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact (FONSI) to the environment was published in the Environmental

Notice on May 23, 2010 (Exhibit B).

PUBLIC HEARING:

The Public Hearing was held on July 26, 2010 at the King Kaumualii Elementary School, 4381 Hanamaulu Road, Lihue, regarding the proposed project. A variety of community interests were represented; local citizens, cultural practitioners, local biologists and scientists, a local fencing company, Kauai Farm Bureau, Kauai Invasive Species Committee, US Fish and Wildlife Service, University of Hawaii, East Kauai Water Cooperative and a local tour company. Members of the Kauai Watershed Alliance in attendance were A & B Properties, National Tropical Botanical Garden and the Department of Water. Twenty-three people signed the attendance sheet and fourteen provided supportive oral testimony. The `Aha Kiole representative, in support of the project, mentioned that she would have liked to see more of a reference to the protection of the Hawaiian culture within all of the documents but all in all was very pleased with the project and how it was going to protect the wao akua.

In addition, supportive written testimony was received from seventy-eight people. In both the oral and written testimony, many cited that the fence was needed to protect the health of the forest and sea birds against the destruction from feral ungulates. Pigs and goats are one of the most significant threats to the Hawaiian Forest and the watershed. No opposing testimony, oral or written, was received. A list of those testifying is attached as Exhibit C.

FINAL ENVIRONMENTAL ASSESSMENT

A Finding of No Significant Impact was issued for the project and published in the OEQC Environmental Notice on May 23, 2010.

13-5-30 CRITERIA

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30 HAR.

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare. Staff is of the opinion that the proposed action will deter feral ungulates in the specific areas of the proposed fence project. The area's natural resources will be greatly preserved and potential impacts will be minimized, with mitigation measures.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the Protective subzone is to protect valuable resources in designated areas such as restricted water-sheds, marine, plant, and wildlife sanctuaries, significant historic, archeological, geological, and volcanological features and sites, and other designated unique areas. Staff notes that proposed project is an identified land use in the Protective subzone,

which is the most restrictive regarding land use development(s). In this case, staff notes the proposed project will protect the valuable resources located in the Wainiha watershed.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

The County of Kauai provided a statement that the proposed project is not located in the Special Management Area (SMA).

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

Staff notes there will be positive impacts to the environment due to the proposed project. Staff is of the opinion that minor impacts have been adequately mitigated, therefore the proposed project will not have any adverse impact to existing natural resources within the surrounding area, community or region.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Staff is of the opinion the proposed fences will fit into the locality and surrounding areas, with appropriate mitigation measures and without significant or deleterious effects to the locality, surrounding area and parcels

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

The applicant has taken the appropriate steps to mitigate any potential impacts, and to maximize and enhance the natural beauty and open space characteristics of the subject parcel. The proposed project is intended to blend in visually with the surrounding area.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed project does not involve subdivision of Conservation District land.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed action will not be materially detrimental to the public health, safety and welfare.

DISCUSSION:

The proposed use is an identified land use in the Protective subzone of the Conservation District, according to Section 13-5-22, Hawaii Administrative Rules (HAR), P-7, SANCTUARIES, D-1, "Plant and wildlife sanctuaries, natural area reserves (see Chapter 195, Hawaii Revised Statutes

(HRS), and wilderness and scenic areas, including habitat improvements under an approved Management Plan;"

Staff notes the proposed project will have a direct positive impact on the native ecosystem and watershed. The proposed project will stop feral ungulate damage, which contributes to the decline of native forest ecosystems.

Due to uncertainties in the Watershed Partnership Program funding, the project term will be extended to allow for adequate time to obtain the funds required to complete the project.

Staff therefore recommends;

RECOMMENDATION:

Based on the proceeding analysis, staff recommends that the Board of Land and Natural Resources (Board) APPROVE this application to construct the proposed East Alaka'i Protective Fence Project, subject to the following terms and conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) Any work done on the land shall be initiated within one (1) year of the approval of such use (from the date of the Board's action), and unless otherwise authorized, be completed within five (5) years of the approval (from the date of the Board's action). An extension can be requested at the end of five years in the event that funding can not be acquired to complete the project within that time. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
- 4) The applicant shall comply with all applicable Department of Health administrative rules.
- 5) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 6) The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
- 7) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and

the find shall be protected from further damage. The contractor shall immediately contact HPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary.

- 8) Other terms and conditions as may be prescribed by the Chairperson;
- 9) The applicant will coordinate with DOFAW to implement invasive species prevention protocols; and
- 10) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.


Respectfully submitted,



Paul J. Conry
Administrator

Approved for submittal:

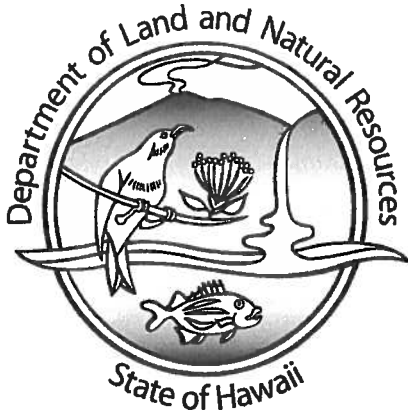
By:



LAURA H. THIELEN, Chairperson
Department of Land and Natural Resources

EXHIBITS A, B, AND C

Conservation District Use Application (CDUA)



For DLNR Use

File # KA-3553
Reviewed by Lisa Ferentinos
Date May 27, 2010
Accepted by Paul J. Conry
Date June 15, 2010
180-Day Exp. : 12/12/2010

EA/EIS Required FEA 5/23/2010

PH Required Yes

Decision _____
Date _____

Project Location/Address: **The Wainiha Parcel, McBryde Sugar Company Ltd. (no address).**

District/County: **Hanalei/Kauai County** Island: **Kauai**

Subzone: **P 1 Restricted** Tax Map Key(s): **[4] 5-8-001:001**

Total Area of Parcel in sq. ft. or acres: **10,000 acres**

Area of Proposed Use in sq. ft. or acres: **7,050 acre preserve**

Indicate which of the following approvals are being sought, as specified in the Hawaii Administrative Rules (HAR), Chapter 13-5.

Board Permit **X**

Departmental Permit ____

Emergency Permit ____

Temporary Permit ____

APPLICANT

Legal Name: **Kauai Watershed Alliance (KWA), c/o The Nature Conservancy**

Mailing Address: **TNC Kauai Program, 4180 Rice Street, Suite 102B**

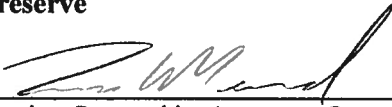
City, State and Zip+4 Code: **Lihue, HI 96766**

Contact Person & Title: **Allan Rietow, TNC Field Representative Kauai Program**

Phone No.: **(808) 639-7544 Cell** Fax No.: **(808)245-1642**

Email: **arietow@tnc.org**

Interest in Property: **Coordinator for the Kauai Watershed Alliance and managing partner for the Wainiha Preserve**

*Signature  Date 5/12/10
*If for a Corporation, Partnership, Agency or Organization, must be signed by an authorized officer.

PROPERTY OWNER(S) (If other than the applicant)

Name: **McBryde Sugar Company, Ltd.**

Mailing Address: **P.O. Box 178**

City, State and Zip+4 Code: **Ele ele, HI 96705**

Contact Person & Title: **Tom Shigemoto of A&B Properties (Vice President)**

Phone No.: **(808) 335-2836** Fax No.: **(808) 335-9708**

Email: **tshigemoto@abprop.com**

*Signature  Date 5/24/10

*For private lands with multiple landowners, landowners whose property interests constitute or exceed 85% of the fee ownership of the subject parcel(s) shall sign the application.

AGENT

Name: _____

Mailing Address: _____

City, State and Zip+4 Code: _____

Phone No.: () Fax No.: () _____ Email: _____

Signature _____ Date _____

Emergency Contact Information

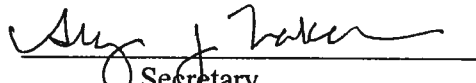
Contact Person and Title: **Melissa Fisher, Program Coordinator** PhoneNo.: **(808)246-0543 Office**

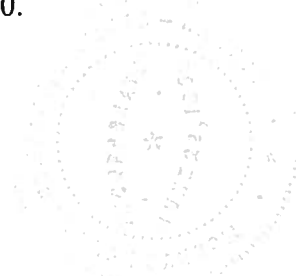
McBRYDE SUGAR COMPANY, LIMITED

CERTIFICATE OF THE SECRETARY

I, Alyson J. Nakamura, Secretary of McBryde Sugar Company, Limited (the "Corporation"), do hereby certify that (1) Alyson J. Nakamura was reappointed Secretary of this Corporation by its Board of Directors on April 29, 2010 and continues to serve in such capacity; (2) Alyson J. Nakamura is authorized to execute the Conservation District Use Permit Application for the Wainiha Conservation Project and other documents on behalf of this Corporation, pursuant to resolutions adopted by unanimous written consent of the Board of Directors of this Corporation as of November 15, 2001; and (3) that said resolutions have not been amended or rescinded and remain in full force and effect.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and caused the seal of McBryde Sugar Company, Limited to be affixed this 24th day of May, 2010.


Secretary
McBryde Sugar Company Limited



PRIOR CONSERVATION DISTRICT USE PERMITS (CDUP)

Please specify all prior CDUPs received for the subject parcel.

Conservation District Use Permit for the East Alakai Protective Fence Project. Approved 4/24/09.

PROPOSED USE

Total Area of Proposed Use: (indicate in acres or sq. feet): **7,050 acre preserve.**

Describe the proposed use in detail. Include secondary improvements such as grading, septic tank placement, utilities, roads, driveways, fences, landscaping, etc. Illustrate general location of improvements on a TMK map; include preliminary architectural renderings with elevations and building footprints with application. Include existing (before) and proposed (after) graphics. If the parcel is or has been the subject of a violation, please include the violation number.

In April 2003, state and private landowners formed the Kaua'i Watershed Alliance (KWA). The KWA members continue to recognize that cooperation is the key to a timely and successful watershed management program that will protect Kaua'i's watershed from invasive alien animals, plants, and other threats.

The objective of this project, the Wainiha Conservation Project (project), is to protect and preserve approximately 7,050 acres (ac) of irreplaceable watershed and unique native ecosystem, as well as the rare and endangered species it supports. The project will be located on the Wainiha preserve in the north eastern mountainous portion of Kauai .

The proposed protective fencing will be approximately 489 meters (.3 miles or 1,604 ft) in length, and will work in conjunction with vertical cliffs and natural barriers to protect approximately 7,050 ac of McBryde Sugar Company, Ltd. (McBryde) land located within the Conservation District. If required, short sections of fencing along natural barriers may be added to manage the area effectively, as well as additional Radio Repeaters to increase effectiveness of communications and crew safety (See *Exhibit A : Project Location map*).

The project will involve the clearing of vegetation, several inches above ground level, from up to a 10 ft wide corridor along the length of the proposed fence alignment using small power and hand operated machinery (i.e., handsaw, pick ax, weed eater, chainsaw). A 48 inch (in) high fence will be constructed using wire mesh or standard hog panels supported by galvanized T-posts. (See *Exhibit B: Fence Construction example*)

To provide weather protection and safety for workers during natural resource management activities, up to 3 weatherports will be assembled. The weatherports will consist of a pre-fabricated weather shelter that is assembled on a raised platform. The shelter will be an 8 ft high octagon, with a radius of 20 ft. (See *Exhibits A & C: Project Location map & Weatherport example*) The following human waste disposal protocol will be followed in order to prevent stream contamination or the breeding of mosquitoes: a 3 to 4 ft deep hole will be dug and human waste, enclosed in compostable bags, will be covered in either agricultural lime or bacillus thuringiensis pellets before being filled in

with dirt at the end of each field trip. A number of baited silo traps will be dispersed throughout the project area.

After construction, the project will consist of natural resource management activities such as feral pig and goat monitoring and removal, baited trapping, installation of short sections of fencing to control any feral pig movement through vertical cliff barriers, invasive weed control, fence maintenance, and monitoring to track the recovery of native plant populations.

Violation(s): None

CONSERVATION DISTRICT REQUIREMENTS

Demonstrate that the proposed use is consistent with the following criteria. Refer to §13-5-30, HAR to review criteria.

Is the proposed land use consistent with the purpose of the Conservation District?

The proposed project area falls under the Hawai'i Administrative Rules (HAR) Conservation District Protective subzone. This HAR §13-5-11 designation is used "to protect valuable resources in designated areas such as restricted watershed, marine, plant, and wildlife sanctuaries, significant historical, archaeological, geological, and volcanological features and sites, and other designated unique areas." The Protective subzone as stated in the law encompasses the protection of watersheds, water sources, and water supplies.

The project was conceived and planned to protect and preserve an important watershed and one of best examples of native lowland wet forest remaining in the state.

The Wainiha Preserve, the project location, is approximately 9.0–9.5 km from the coast where the area is wet, with an average annual rainfall of 160–200 inches.

The upper valley portion contains one of the largest populations of the rare Laua'e fern which is referred to in many Kaua'i chants. The native mint, *Phyllostegia helleri*, had once been thought to be extinct, was rediscovered at Hinalale Falls in this valley in 2004 by Ken Wood of The National Tropical Botanical Garden. Other species of interest found in the valley are the endangered *Cyrtandra cyaneoides* and *Plantago princeps* var. *logibracteata*. In July 2009, the flora of the Valley portion of the Wainiha Preserve (7050 acres) was estimated to be composed of some 281 taxa of vascular plants from 75 families. This includes 222 native taxa, 51 non-native naturalized species, and 8 Polynesian introductions. Of the 222 native plant species naturally occurring within the Wainiha Preserve region, it was found that 177 are endemic and 45 are considered

indigenous. The Preserve contains 63 Kaua'i single island endemic (SIE) taxa which is 28% of the entire 225 SIE taxa unique to Kaua'i. This high level of endemism clearly demonstrates the floristic uniqueness, diversity, and importance of the region (Wood, 2009).

Is the proposed use consistent with the objectives of the subzone of the land in which the use will occur?

**Yes, the proposed use is consistent with the objectives of the protective subzone of the land in which the use will occur. The project's proposed fencing and management plan represent a best effort for preventing any further degradation of the native Hawaiian Montane and Lowland Wet Forests and would provide needed protection for the watersheds associated with these forests
(See *The Wainiha Conservation Project Management Plan*, pages 4-6)**

Does the proposed land use comply with provisions and guidelines contained in Chapter 205A, Hawaii Revised Statutes (HRS), entitled "Coastal Zone Management," where applicable?

N/A - The project is located in the mountains, in the remote, mauka portion of Wainiha, approximately 9.0–9.5 km from the coast.

Describe how the proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.

There will be no adverse impacts to the remote area. The proposed project has been carefully planned to protect and preserve the existing natural resources and watershed within the project area and will have no lasting effects or impacts within the surrounding area. To accommodate the construction of the fence during the short construction phase, a minimum of disturbance to the vegetation of no greater than ten feet in width along the fence alignment will occur and approximately one half acre (foot print of fence alignment) would be affected.

Describe how the proposed land use, including buildings, structures and facilities, will be compatible with the locality and surrounding areas, and to the physical conditions and capabilities of the specific parcel or parcels.

Although the physical components of this project, the fencing, weather ports, silo traps are foreign to the Wainiha Preserve forests, their presence will be necessary to protect this unique ecosystem and watershed from continuous degradation by feral ungulates and invasive weeds. They have been designed specifically for use and compatibility in very remote, sensitive forested locations.

(See Exhibit A: Project Location; Exhibit B: Fence Examples; Exhibit C: Weatherport Example; Exhibit G: Silo Trap and Feeder)

Describe how the existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon.

The construction of the protective fencing and supportive components will facilitate the removal of feral pigs, feral goats, and invasive weeds that, if left unchecked, will ultimately lead to irreparable damage of this important native Hawaiian ecosystem and watershed. In addition, the above mentioned items present a very low profile, with a maximum of 8 feet in height (weatherport) therefore, due to the forest canopy and remote location, will not impact the natural beauty and open space characteristics of the preserve.

If applicable, describe how subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.

N/A - There will be no subdivision of the land.

Describe how the proposed land use will not be materially detrimental to the public health, safety and

welfare.

The project is located within the Wainiha Preserve, approximately 9.0–9.5 km from the coast. This area is one of the most remote locations on the island, far from access of the general public at large. The project will be limited to the construction of hog wire fencing designed to keep out destructive feral pigs, up to 3 weatherports, and a number of silo traps. The project is designed to protect native Hawaiian forests and the remote watershed from continuous degradation.

(See Wainiha Conservation Project Management Plan, Page 3-6; Exhibit B: Example of Fence construction)

ADDITIONAL INFORMATION

Articles IX and XII of the State Constitution, other state laws, and the courts of the State require government agencies to promote and preserve cultural beliefs, practices, and resources of native Hawaiians and other ethnic groups. The Department of Health (DOH), Chapter 343, HRS also requires an Environmental Assessment (EA) of cultural resources in determining the significance of a proposed project.

If applicable, please provide the identity and scope of "valued cultural, historical and natural resources" in which traditional and customary native Hawaiian rights are exercised in the area.

It is unknown whether or not traditional and customary native Hawaiian rights are exercised within the project area. The project area is located in the very remote, upper portion of Wainiha, within the Wainiha Preserve (7050 acres), approximately 9.0–9.5 km from the coast. There are no established trails leading to or near the project area. (See *Exhibit E: Vicinity & Parcel map*) The terrain is rough, wet, and characterized with dense forests and shrubland, cliffs and steep stream walls. Access is only via written permission from the private landowner and is regulated by their right of entry protocols.

There is very limited cultural, historical documentation of the project area and there are significant natural resources located within the project area. Any historical/cultural sites located within the fenced area are unknown. Please see the Discussion and Conclusion section of the Archeological Survey, page 10. The natural resources consist of the diverse populations of native Hawaiian plants found within the Preserve (*See Exhibit D: The Critical and Rare Resources map and Exhibit O: Access map*) Many of these plants have cultural significance and are used traditionally. It is important to note that the majority of these plants may also be found in numerous areas within easy access of paved roads, 4WD roads, and maintained trails throughout the island.

The construction of the protective fences will not impact access to the area for cultural purposes. Within the fence alignments, several access gates will be located to accommodate access to the area. (*See Exhibit A: Project Location*)

Identify the extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action.

No resources will be impaired by this project. The protective fencing project will positively affect those resources, protecting both any historical sites and the natural resources valued by cultural practitioners from damage and possible destruction. The fences will have access gates (See *Exhibit A: Project Location; Exhibit E: Vicinity and Parcel Map*)

What feasible action, if any, could be taken by the Board of Land and Natural Resources in regards to your application to reasonably protect native Hawaiian rights?

No action may be necessary at this time. The project is located within a remote area, the of the mauka portion of Wainiha Preserve. The protective fences will have access gates and the private land owner retains control of access to the parcel as it has historically, prior to this application. The project will not change or require any additional measures to protect native Hawaiian rights.

Does the proposed land use have an effect (positive/negative) on public access to and along the shoreline or along any public trail?

No, the project is located within the remote, mauka portion of the Wainiha Preserve, approximately 9.0–9.5 km from the shoreline. There are no public or private maintained trails that lead to the project area. (See *Exhibit E: Vicinity & Parcel map and Exhibit O: Access map*)

Does the proposed use have an effect (positive/negative) on beach processes?

N/A – the project is located in the mauka region, approximately 9.0–9.5 km from the coast.

Will the proposed use cause increased runoff or sedimentation?

No, there should not be in the long term. There may be some opportunity for limited runoff or sedimentation along the fence alignments for a very short duration during the construction phase of the project. The construction of the fence will have very limited soil disturbance to the area as the foot print of the protective fencing is no more than 1 acre. Required clearing will cut back vegetation to several inches above the soil level not to bare earth. The contractor (experienced in remote fence construction) will roll out the hog wire on the ground to use as a walking mat during the post setting then use the outside wire apron. The actual on the ground construction time will be less than 1 month. There will be little to no disturbance during the assembling of the pre-constructed weatherports, silo traps and any necessary wing fencing (to secure steep, natural cliff barriers). (See *The Wainiha Protective Fencing Project Management Plan, page 16, Vegetation and Soil Disturbance*).

Will the proposed use cause any visual impact to any individual or community?

No, the project is located in the remote, Wainiha Preserve, far from public view. There are no trails, unimproved roads or improved road close to the project site. The hog wire fencing measures approximately 4 feet in height, the weatherports measure a maximum height of 8 feet each. These heights will not clear the mid-understory and definitely not the canopy of the region's forests. During periods of clear weather they may be visible by aircraft.

EXISTING SITE INFORMATION

To better understand existing features on and of the land, mapping of existing features is requested. Mapping of existing features may be combined. Please include Titles, Legends and North arrows.

Are there existing structures on the parcel? ☒ Yes ☐ No

If yes, please describe below and include/illustrate on a map entitled *existing structures*.

A stream gauging station, stream diversion and a hydro power plant are present in the Wainiha Parcel, however all of these structures are far downstream from the project area and will not be affected by the actions in this application. (See Exhibit N: Existing Structures and Historical, Archeological and Cultural Resources map)

NA

Will any existing structures be demolished or removed? ☐ Yes ☒ No If yes, describe how below. Please indicate/illustrate demolished structure on a map entitled *structures to be demolished/removed*.

NA

Has the parcel been graded or landscaped? ☐ Yes ☒ No If yes, describe below. Please describe cubic yards affected and/or area of landscaping on a map entitled *areas previously graded or landscaped*.

NA

Describe existing utilities. Include electricity, water, telephone, drainage, and sewerage. Please illustrate on a map entitled *existing utilities*.

N/A - The project area is located in a remote area, no utilities are available or required.

Describe existing access. Illustrate and include roadways and public trails on a map entitled *existing access*. Give major street names if available.

There are no existing accesses. Roadways and State maintained or private foot trails do not access the project area. (See Exhibit E: Vicinity & Parcel map and Exhibit O: Access map)

Describe Flora and Fauna. Illustrate general location and types of flora and fauna on a map entitled *resources*. Indicate if rare or endangered native plants and/or animals are present.

The flora and fauna of the Wainiha Preserve consists predominantly of native plants and animals. It is estimated that 90 % of the forest is intact native forest. Native fauna consist of invertebrates, Koloa Duck, and seasonal sea birds 'Ua'u and 'A'o and the Hawaiian Hoary Bat.

Plant Types - Native plant and plant community types:

- 1.) Montane and Lowland Wet Forest and Shrubland.
- 2.) Wet Cliff
- 3.) Freshwater Stream and Riparian Corridor vegetation communities
- 4.) Rare Plants include species Endangered, Proposed Endangered, Candidate for Listing, Species of Concern.
- 5.) Introduced non-native species.

(See Exhibit D: Critical & Rare Resources Map; The Wainiaha Protective Fencing Project Management Plan, Biological Resource, page 7; Table-1: Checklist of Rare Taxa, page 9 and Table-2 : Critical Habitat, page 12)

Describe topography and submit a map entitled *topography*. If ocean area, give depths. Submit detailed contour maps for ocean area and areas where slopes are 20% or more. Contour maps will also be required for uses involving tall structures, gravity flow and other special cases.

Specific to the project area: The topography – Varied, typical of the mauka portions of steep valleys and mountains located in the wet northeastern portions of the Hawaiian Islands. (See Exhibit H: Topography map)

If shoreline area, describe shoreline and surrounding area. Indicate and illustrate if shoreline is sandy, muddy, rocky, cliffs, reefs, or other features (such as access to shoreline) on a map entitled *coastal resources*. A current shoreline certification is required for uses that may affect shoreline resources.

N/A - The project is located in the mauka portion of the Wainiha parcel, approximately 9.0–9.5 km from the coast.

If shoreline area, describe and illustrate any coastal hazards such as erosion, flooding, tsunami, etc. Attach any relevant maps delineating the hazard zone (FEMA, FIRM maps).

N/A - The project is located in the mauka portion of the Wainiha parcel, approximately 9.0–9.5 km from the coast.

Describe existing covenants, easements, and restrictions. If State owned land, indicate present encumbrances.

No existing covenants, easements, or restrictions have been identified in the project area, which is on private land.

Identify any historic, archeological or cultural sites within or near the parcel. Please submit or include any preservation or management plan. If applicable, indicate location(s) on a map entitled *historical, archeological, and cultural resources* and describe below.

The scope of the Protective fencing project is to construct fences to protect the Wainiha Preserve, consisting of the high quality watershed and intact native Hawaiian ecosystem that contains rare and endangered plants and animals. According to the archeological survey and Cultural Impact Assessment, there are no known historic, archeological or cultural sites within or near the valley portion the parcel.

Site reports – Cultural Impact Assessment for Wainiha Fence Project Prepared by Samuel M. Gon III, Ph.D., Senior Scientist and Cultural Advisor, The Nature Conservancy of Hawai'i, October 2009 and An Archeological Survey for an Animal Control Fence in Wainiha Valley, Kaua'i by T.S. Dye & Colleagues, Archeologists, Inc., October 21, 2009

Within the surveyed fence alignments, several access gates will be located to accommodate access to the area. The protective fencing will protect the site from degradation. Potential damage to any sites of significance from hoofed animals such as goats and pigs will be reduced or eliminated. There are no known cultural, historic or archeological management plans known for the project area. (See Exhibit E: Vicinity & Parcel map and Exhibit N: Existing Structures and Historical, Archeological and Cultural Resources map)

ADJACENT PROPERTY OWNERS

Please list all adjacent property owners. If no address is available indicate north, south, east and west or mauka, makai or other common county directionals.

TMK: 4-1-7-001-001 and -4-5-8-002-002

Legal Name: Robinson Family Partners

Street Address:

City, State and Zip code:

Mailing Address: P.O. Box 156

City, State and Zip: Kaumakani, HI 96747

Phone No.: 335-3133 Ext. 238

Location to TMK: South and North

TMK: 4-5-4-001-001, 4-4-2-001-002 , 4-3-9-001-001 and 4-1-4-001-003

Legal Name: State of Hawaii

Street Address:
City, State and Zip code:

Mailing Address: **Watershed Partnerships Program**
Division of Forestry & Wildlife/DLNR
1151 Punchbowl St., Rm.325

City, State and Zip: **Honolulu, HI 96813**

Phone No: **(808) 586-0917**

Location to TMK: **East and West**

TMK: 4-5-7-001-001

Legal Name: **Kamehameha Schools**

Street Address:
City, State and Zip code:

Mailing Address: **567 S. King Street**

City, State and Zip: **Honolulu, HI 96813**

Phone No: **(808) 523-6244**

Location to TMK: **East**

(Intentionally left blank)

BERNARD P. CARVALHO, JR.
MAYOR

GARY K. HEU
ADMINISTRATIVE ASSISTANT



IAN K. COSTA
DIRECTOR OF PLANNING

RECEIVED JAN 21 2010

IMAICALANI P. AIU
DEPUTY DIRECTOR OF PLANNING

**COUNTY OF KAUA'I
PLANNING DEPARTMENT**

4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHU'E, KAUA'I, HAWAII 96766-1326

TEL (808) 241-4050 FAX (808) 241-6699


January 21, 2010

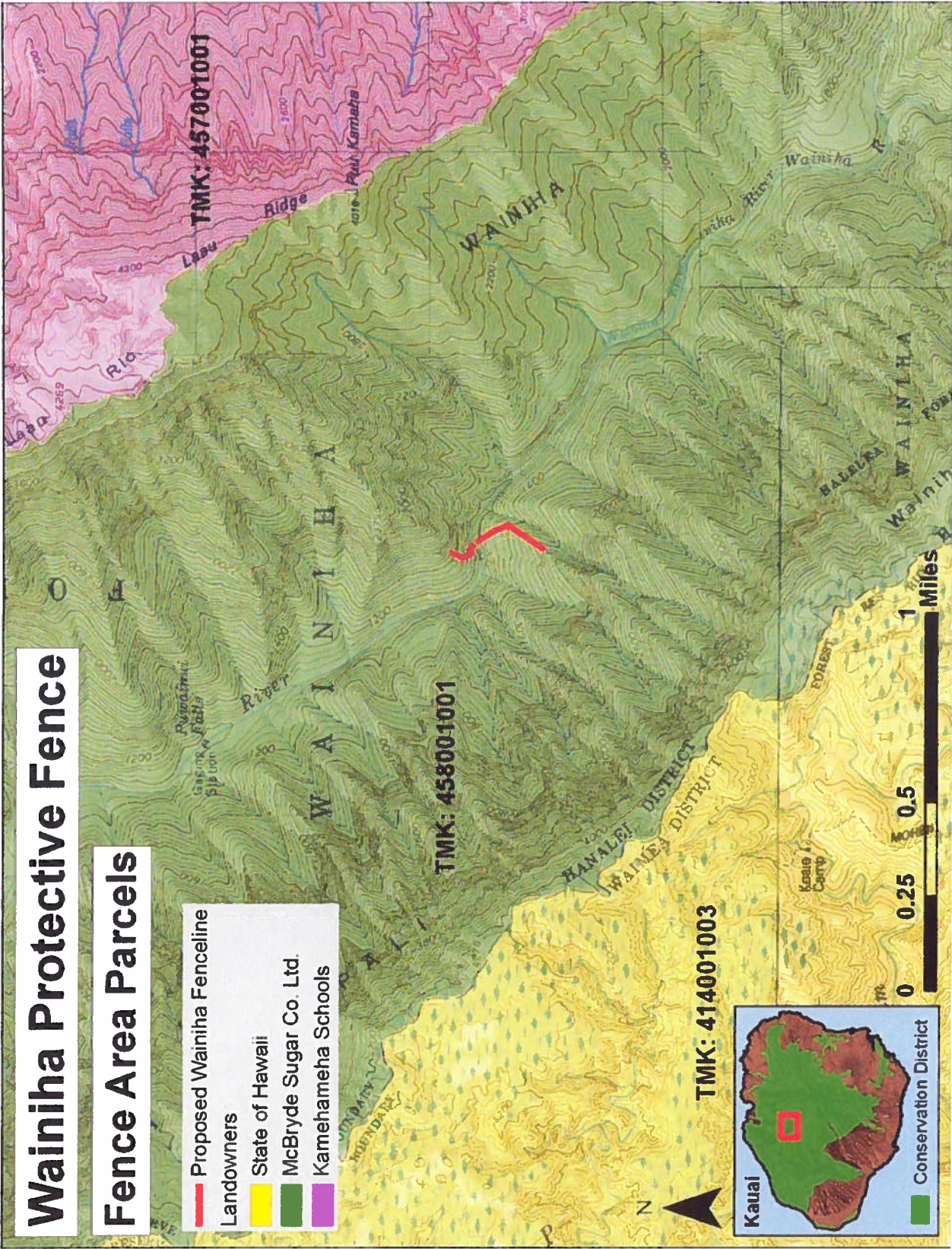
The Nature Conservancy
Kaua'i Program
4180 Rice Street
Suite 102B
Līhu'e, HI 96766

Subject: McBryde Sugar Co.
Proposed protective hog wire fencing
The Nature Conservancy/Alexander & Baldwin, Applicant
Tax Map Key (4) 5-8-001:001, Wainiha, Kaua'i

The above referenced parcel is not located within the Special Management Area of the County of Kaua'i. Please note that the parcel is not located with the Coastal Zone Management area as defined by HRS 205A-1.

Should there be any questions relative to the above, please contact Lisa Ellen Smith at 241-4050.


IAN K. COSTA
Planning Director



KAUAI (HRS 343)

1. The Wainiha Conservation Project (FEA)

Island: Kauai
District: Hanalei
TMK: 4-5-8-01-01
Applicant: Kauai Watershed Alliance, c/o The Nature Conservancy, 4180 Rice Street, Suite 102B, Lihue, HI 96766. Allan Rietow, 639-7544

Approving Agency: Dept of Land and Natural Resources, Division of Forestry and Wildlife, Watershed Partnerships Program, 1151 Punchbowl Street, Room 325, Honolulu, HI 96813
Consultant: Kauai Watershed Alliance, c/o The Nature Conservancy, 4180 Rice Street, Suite 102B, Lihue, HI 96766. Allan Rietow, 639-7544
Permits: CDUP
Comments: FEA accepted by the Approving Agency. There is no comment period

Kauai Watershed Alliance, with the approval of landowner McBryde Sugar Company, proposes to construct protective hog wire fencing to prevent movement of feral pigs into Wainiha Preserve. Management actions include monitoring, ungulate and invasive plant control to preserve the existing health and function of the watershed and native Hawaiian forest - home to a rich diversity of native plants and animals - 222 endemic and indigenous plant species. Fencing will be under ½ mile long; will work in conjunction with existing fences, vertical cliffs and natural barriers to protect 7,050 ac. within the Conservation District. Vegetation will be cleared inches above ground level, up to a 10 ft. wide corridor along the alignments' length using small power and hand operated equipment (i.e., handsaw, weed eater, chainsaw). Fencing 48 inches high will be constructed using wire mesh supported by T-posts. The affected area will be less than 1 acre. Decades of feral pig control in Hawaii verifies that the only successful method of protecting an area from damage is to exclude pigs using wire mesh fencing. Practical research has clearly demonstrated the serious threat posed and the recovery of the native vegetation once they are removed.

2. Anahola Commercial Kitchen (DEA)

Island: Kauai
District: Kawaihau
TMK: (4) 4-8-03:04
Applicant: Anahola Hawaiian Homes Association, PO Box 646, Anahola, HI 96703. Lorraine Rapozo, 820-8029

Approving Agency: Dept of Hawaiian Home Lands, PO Box 1879, Honolulu, HI 96805. Linda Chinn, 620-9450
Consultant: Nadine Nakamura, NKN Project Planning, 4849 Iiwi Road, Kapaa, HI 96746. 822-0388
Permits: Building, Electrical, Plumbing, and Grubbing, Grading, Department of Health permits
Comments: DEA 30-day comment period starts from the date of this Notice. Address comments to the Applicant, with copies to the Approving Agency and Consultant

The Applicant, the Anahola Hawaiian Homes Association, proposes to construct a community commercial kitchen to the south of the Anahola Hawaiian Homes Association's facility and the Hawaiian Homestead Technology Center. This proposed action is one component of the Anahola Community Agribusiness Microenterprise Program project, which is to construct a commercial kitchen to store, process and sell agricultural products to be grown on nearby farm lands. The commercial kitchen will also provide a location for job training, employment, and small business development for residents of the

Wainiha Conservation Project
 Testimony Received August 2010

EXHIBIT C

Name	Title	Representing	In Favor	Opposed
Aletha Kaohi	Cultural Practitioner		x	
Amber Namaka Whitehead	Ecologist, Land Assets Division	Kamehameha Schools (KWA)	x	
Andrea Erichsen	Coordinator	Kauai Seabird Habitat Conservation Plan	x	
Arryl Kaneshiro		Grove Farm	x	
Barbara Neal			x	
Brianne Shiroma			x	
Chipper Wichman	Director & CEO	NTBG (KWA)	x	
Christine Ogura			x	
Cindy Adams			x	
Cleve Javier			x	
David Alexander			x	
David Craddick	Manager and Chief Engineer	Department of Water, County of Kauai	x	
Ezra Konoho	Representative, Ret.	Hawaii State Legislature	x	
Gilbert P. Kea	Vice President	Garden Island Resource Conservation & Dev., Inc	x	
Gina Odegard			x	
Glen Sato			x	
Glenn Goldsmith			x	
Gordon LaBedz	President	Surfrider Foundation, Kauai	x	
Harry Ekn			x	
Holly Dyre		Namahana Farms (KWA)	x	
Isaac Ornellas			x	
J Pachard			x	
Jan TenBruggencate			x	
Jane Goldsmith			x	
Janis Lyon			x	
Jason Silva			x	
Jeffrey Rivera	Manager	Kauai Ranch	x	
Jeri Ooka	Plant Pathologist		x	
John Chapman			x	
John R. Gordines			x	

Jostheph Aguon-Kona				x
Joseph Kona				x
Justin Franzmeier				X
Justin Rivera				x
Kai Lydgate				X
Kaipo Duncan	Land Agent	Department of Hawaiian Homelands (KWA)		x
Keren Gundersen	Project Manager	Kauai Invasive Species Committee		x
Kathy Valier				x
Katie Cassel	Program Coordinator	Kokee Resource Conservation Program		x
Kehaulani Kekua	Kumu Hula	Halau Palaihiwa O Kaipuwai		x
Keith Yap				x
Kepa Maly		Kumu Pono Associates LLC		x
Larry Dill	Secretary & Manager	Princeville Utilities (KWA)		x
Larry Kaneholani				
Lelan Nishek	President	Kauai Nursery and Landscaping		x
Leland Keola				
Loyal Mehrhoff	Field Supervisor	US Dept of Interior Fish & Wildlife Service		x
Lynn Barker				X
Lynn McCrory	President	Pahio Development		x
Margaret Clark				X
Marion A Schmidt, Jr.				X
Mark Hubbard				x
Michael DeMotta				x
Michelle Swartman		Lihue Land Company		x
Mina Morita		State Representative		x
Namaka Whitehead	Ecologist, Land Assets Division	Kamehameha Schools (KWA)		x
Patricia Sheehan				x
Paul Clark	President	Save Our Seas		x
Peter Tausend	Chair	West Kauai Soil & Water Conservation Districts		x
Phillip Burchett				x
Rachel A. Martin				X
Sarah Bowen		East & West Kauai Soil & Water Conservation Dist		x
Scott Sato				
Stanley Ornellas				x

Stephen Smith	Principal	Forestry Management Constant	x
Stephen Smith	Principal	Hawaii Forestry Management Consultants	x
Steven Perlman			x
Susan Boynton			x
Tiffani Keanini			x
Tim Flynn			x
T. Diy		Kauai Ranch	x
Ted Inouye	Chair	East Kauai Soil & Water Conservation Districts	x
Tessa Mason			X
Tom Shigemoto	VP	A & B Properties, Inc (KWA)	x
Wayne Jacintho			x